

The claimant requests review of the nature and extent of his disability. Put simply, claimant contends the ALJ erred in failing to take into consideration *each* of the 3 separate impairment ratings.¹ Had the ALJ done so, claimant maintains the resulting permanent impairment finding would have been as much as 10.7 percent to the shoulder.

Respondent argues that the ALJ's Award should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ set forth the opinions of each of the testifying physicians in her Award and the Board adopts that statement as its own.

As noted by the ALJ, there were 3 physicians who testified in this claim relative to claimant's permanent impairment. And each of the 3 physicians provided a different ultimate rating based upon a different section of the *Guides*. There is nothing within this record to suggest that any one of the methods used by either of the physicians was improper. Rather, it appears that each physician used his own judgment to determine, based upon a select portion of the *Guides*, claimant's impairment.

Dr. Pat Do examined claimant and by using the skin disorder table on page 280 rendered a 3 percent rating.² According to Dr. Do, claimant had normal strength and sensation within his upper extremity and although claimant continues to complain of pain, pain cannot be rated under the 4th edition of the *Guides*. For that reason, Dr. Do utilized that portion of the *Guides* which acknowledges that impairment can be allowed for scarring to the forearm, which is something claimant has as a result of his accident and resulting treatment.³ Other than the scarring, Dr. Do found claimant's presentation to be normal.

Claimant was also seen by Dr. Pedro Murati, at his attorney's request. Claimant testified his exam with Dr. Murati was different from his other exams in that Dr. Murati seemed to do a lot more exercises and spent more time with him. Dr. Murati diagnosed right carpal tunnel syndrome, right elbow radial nerve entrapment, right wrist ganglion cyst

¹ Each of the ratings offered by the physicians was based upon the 4th edition of the *Guides* and was at the level of the right upper extremity, although Dr. Prosic's rating was to the shoulder level while Drs. Do and Stein rated at the elbow (arm).

² Do Depo. at 7.

³ *Id.* at 10-11.

and myofascial pain syndrome.⁴ He concluded that all of these conditions were causally related to claimant's accident and as a result, he bore a 25 percent impairment.⁵ When asked, Dr. Murati explained that he utilized tables 16, 18 and 19 for the carpal tunnel and crepitus problems, and figure 38 (on page 43) for the shoulder.

At the court's request the claimant went to see Dr. Paul Stein. In his October 31, 2005 IME report Dr. Stein noted that the claimant's chief complaint was right lateral elbow pain. Following an examination, Dr. Stein opined that the claimant's condition was consistent with right lateral epicondylitis at the elbow, likely secondary to irritation of the recurrent articular branch of the radial nerve. He assigned a 4 percent impairment to the right upper extremity based upon Table 15 of the *Guides*, a table that he thought best applied to the nerve disturbance at the articular branch of the elbow and the resulting lack of grip strength.⁶ Dr. Stein did not believe that Table 16 applied to lateral epicondylitis conditions and for that reason, he utilized Table 15.

When questioned about his methodology on using the *Guides* and which section was appropriate to use with respect to claimant's condition, he responded as follows:

I understand your argument, and I suppose this is a matter of judgment, and as I said, there may be other examiners who would see it differently. I have a tendency to try to stick pretty strictly within the rules of the *Guides*, and that is my interpretation. I certainly, you know, from a personal point of view wouldn't argue against, you know, giving him more impairment. This is what I think the *Guides* under appropriate and strict interpretation provide. I think that there are other times if we took Mr. Burgardt and got full effort from him, depending on whether his elbow was bothering him on that day or not, his strength would vary.⁷

The ALJ noted all 3 physicians' testimony and after reviewing that testimony, was persuaded by the opinions expressed by Dr. Stein, over those offered by Dr. Do and Dr. Murati. There is no indication that she wholly failed to consider the other physicians' opinions, nor is there a requirement under the Act that she average all of the permanent impairment ratings. The Board has likewise considered the expert medical opinions and the ALJ's Award should be and is hereby affirmed.

⁴ Murati Depo. at 6.

⁵ This 25 percent reflects 10 percent for the carpal tunnel, 10 percent for nerve entrapment, 6 percent for wrist crepitus and 1 percent to the shoulder.

⁶ Stein Depo. at 17.

⁷ *Id.* at 28-29.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated July 5, 2006, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of October, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Reidmiller, Attorney for Claimant
John R. Emerson, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge